



Appeal Decisions

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 April 2026

Appeal A Ref: APP/A5840/C/25/3361416

12 Denmark Hill, London SE5 8RZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Orhan Ozcan against an enforcement notice issued by the Council of the London Borough of Southwark.
- The notice was issued on 27 January 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the first, second and third floors of the Land from commercial space within use class E (previously A1) to three self-contained dwellings within use class C3 (“the Unauthorised Change of Use”).
- The requirements of the notice are to:
 1. Cease all residential use of the Land;
 2. Remove the kitchen and bathroom facilities from the first, second and third floors of the Land;
 3. Return the first, second and third floors of the Land to the layout that existed before the breach occurred; and
 4. Remove from the Land all materials, rubbish and debris resulting from the carrying out of the above steps.
- The period for compliance with the requirements is: Nine months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/A5840/X/24/3344253

Flat 1, 12 Denmark Hill, London SE5 8RZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development.
- The appeal is made by Mr Orhan Ozcan against the decision of the Council of the London Borough of Southwark.
- The application ref 24/AP/0520, dated 23 February 2024, was refused by notice dated 22 April 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is 3 1-bedroom 2-person self-contained flats on the first, second, and third floors of the five storey building. The basement and ground floor are occupied by a commercial unit.

Summary Decision: The appeal is dismissed.

Background

1. When the appellant first purchased the site, it is said to have been in a poor condition, with unlawful activity having an adverse effect on the area. Planning permission was obtained for extensions and the conversion of the upper floors into two flats. The rear extension was not constructed. There is no dispute that upper floors were put to use as 3 separate flats in around October 2019, more than 4 years before the application for a lawful development certificate subject to Appeal B (“the LDC application”) was made, and the enforcement notice subject to Appeal A (“the Notice”) was served.

2. I have no reason to doubt that the flats have been finished to a high-quality specification or that, despite their small size, there has been a steady stream of satisfied occupants. However, these matters, or anything else relevant to the planning merits or benefits of the development, are not relevant to the consideration of these appeals, which turn on the facts of what occurred at and in connection with the site. The onus is on the appellant to prove their case to the standard of the balance of probabilities.
3. It appears that the submission of the LDC application alerted the Council to the breach of planning control. Although there were early indications that it might be approved, it was ultimately refused on the basis that the Council believed that the unauthorised development had been deliberately concealed by the appellant.
4. The Council then applied to the Magistrate's Court for a Planning Enforcement Order ("PEO"), seeking the ability to take enforcement action against the unauthorised development, notwithstanding that the time periods specified in S171B of the Town and Country Planning Act 1990 ("the 1990 Act") had been exceeded.
5. A PEO was granted and the Notice was then issued, within the enforcement year, being a year that begins at the end of 22 days beginning with the day on which the court's decision to make the PEO is given. The matters alleged in the Notice are the same as the apparent breach of planning control stated in the PEO. Even though the Council's planning enforcement officers did not view the flats before serving the Notice, there is no dispute that the alleged breach of planning control has occurred in the terms stated.
6. The appellant is concerned about the process followed in the Magistrate's Court. However, this appeal is not against that decision, and I have no authority to question it now. Even though the appellant was not legally represented, no challenge was made to the PEO, despite a statutory ability to do so.

Appeal A on ground (d)

7. The appeal is made only on ground (d), that at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters alleged.
8. S171BA(2) of the 1990 Act provides that if a magistrates' court makes a PEO in relation to an apparent breach of planning control, the local planning authority may take enforcement action in respect of the apparent breach, or any of the matters constituting the apparent breach, at any time in the enforcement year.
9. Therefore, at the date when the Notice was issued, enforcement action could be taken and the appeal on ground (d) must fail.

Appeal B

10. S191(2) of the 1990 Act provides that, for the purposes of that Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The Notice was not in force at the time that the LDC application was made.

11. Nevertheless, in considering the LDC application, as a matter of public policy, the appellant may still be denied the immunity from enforcement action usually achieved through the passage of time if the person claiming that immunity engaged in conduct which deliberately concealed the unauthorised development. Given that the time limits in S171B of the 1990 Act had passed by the time the LDC application was made, the crux of this case is whether such conduct did occur.
12. It appears that the appellant had various interactions with the Council after the flats were occupied. Firstly, in response to questions from the Council Tax department, he told officers that he had permission for two flats. There was nothing untrue about that and the Council subsequently registered the building as two flats.
13. However, the appellant had every opportunity at that stage to tell the Council that there were, actually, 3 flats at the site, but did not. There may not be an accurate contemporary record of the conversation, which, despite some confusing notes on the Council's file, the appellant says was the only one he had with the Council Tax department. Nevertheless, he later told his agent for the LDC application that he had told the Council's officer that the building was occupied, he was happy to pay the Council Tax due, and agreed to an inspection. Even though the inspection never took place, given that it seemed relatively likely to occur there seems to have been no reason not to be fully open about the true situation then on the ground.
14. Later, having taken objection to the way that the newly registered addresses had been described, the appellant applied to the Council for the addresses to be changed. This is said to have been for the purpose of making the addresses simpler and consistent with most other addresses for flats in London. The appellant says he was not intending to register new addresses with the application.
15. However, on the application form for street naming and numbering, the appellant gave the 'description and purpose for which the building is to be used' as '2 residential flats'. He proposed names and numbers as Flat 1, 12 Denmark Hill, and Flat 2, 12 Denmark Hill. In response to the question 'Number units/flats or houses within the development' he stated the same.
16. At this stage, it would have been logical to have requested an address for the third flat. It appears that it was, at that time, without a formal address and still not registered for Council Tax. It does seem somewhat unlikely that, whilst simplifying the addresses for flats 1 and 2, one would not also seek to obtain a recognised address for the third flat unless there was a desire to conceal its existence. Moreover, a false answer was clearly given to the question on the application form requiring a description of the purpose for which the building is to be used. At that stage, there were 3 flats within it.
17. Finally, in submitting notices under the Building Regulations, the appellant referred only to 2 flats. I understand that those notices may have been made on the appellant's behalf, but, even though the final Building Regulations inspection took place while the building was still a shell, there is no clear explanation as to why the notices would have stated that the development was for 2 flats when works were underway to create 3.
18. Therefore, while the flats were under construction and then occupied, there were dealings with 3 separate Council departments in respect of matters connected with

them. Even if there was never any obligation to mention the three flats, it does appear that the appellant actively avoided disclosing them, including when making seemingly relevant applications relating to other parts of the building. That the LDC application was made only a very short time after the period in which the Council could have taken enforcement action makes it more probable that time was being allowed to pass before the true situation was finally revealed to the Council.

19. For the above reasons, while I am not examining their decision, I find no reason to come to a different conclusion to that taken by the Magistrate's court that it is more likely than not that deliberate concealment of the development applied for occurred. Moreover, the appellant stood to benefit from that concealment once the relevant time period had passed. Accordingly, as a matter of public policy, the immunity from enforcement action that would normally be achieved through the passage of time should be denied.
20. Therefore, I conclude that the Council's refusal to grant a certificate of lawful use or development for '3 1-bedroom 2-person self-contained flats on the first, second, and third floors of the five storey building. The basement and ground floor are occupied by a commercial unit' is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Conclusions

21. For the reasons given, both appeals A and B should be dismissed. Even if I had concluded differently on appeal B, issuing a certificate of lawful use or development now would seem to serve no practical purpose as the Notice would still come into effect.

Formal Decisions

Appeal A

22. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

23. The appeal is dismissed.

M Bale

INSPECTOR